

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:CTM:LN:TL-N-4094-01

SHwang

date: AUG 10 2001

to: Eric Nakahara, Team Manager, LMSB:FSH: 1224, Santa Ana

from: June Y. Bass, Associate Area Counsel (LMSB), Laguna Niguel
Joyce M. Marr, Attorney (LMSB) *JMM*
Sandy Hwang, Attorney (LMSB) *SH*

subject: [REDACTED]

TIN: [REDACTED]

Tax Years: [REDACTED], [REDACTED], [REDACTED], and [REDACTED]

Statute of Limitation Date: [REDACTED]

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

This is in response to your request dated June 27, 2001, for our advice regarding the language to be used in the restricted consent for [REDACTED] (" [REDACTED]" or taxpayer). This memorandum should not be cited as precedent.

You are currently auditing the [REDACTED], [REDACTED], [REDACTED] and [REDACTED] consolidated tax returns filed by [REDACTED].¹ The only unagreed issue involves the valuation of the taxpayer's trade receivables which it elected to mark to market under § 475. See the Notice of Proposed Adjustments (Form 5701) affixed hereto as Exhibit A.

In [REDACTED], the taxpayer amended its returns twice for each of the years [REDACTED], [REDACTED], and [REDACTED]. Before the issuance of Rev. Proc. 97-43, 1997-2 CB. 494, the taxpayer filed its first set of

¹Unless specifically noted, we have relied upon facts presented to us orally and in writing by the Examination Division. Our advice might be different if the facts were different. If the facts which we recite in this memorandum ultimately prove to be inconsistent with your understanding of the facts, or if we have recited facts of which you are not aware, contact this office immediately and do not rely on this memorandum.

amended tax returns electing to mark to market its trade receivables under I.R.C. § 475. The second set of amended tax returns was filed after the issuance of Rev. Proc. 97-43. The taxpayer properly elected not to be governed by the customer paper exemption. See Treas. Reg. § 1.475(c)-1(b)(4)(i). Copies of relevant pages of the amended returns for [REDACTED], [REDACTED], and [REDACTED] are affixed hereto as Exhibits B, C, and D respectively.

The statute of limitations for assessment expires on [REDACTED]. In order to forward the case to Appeals, you need to extend the time for assessment. The taxpayer is willing to give a restricted consent.

To accomplish your purpose, we recommend the restricted consent language below. The restricted language on the consent form should be placed in the space between the printed text of the form and the first signature line. However, if space is limited, the restricted language can be placed on an attachment and "SEE ATTACHED STATEMENT" should be placed in the space between the printed text and the first signature line of the restricted consent forms.

The restricted language on the Form 872 should read as follows:

The amount of any deficiency, penalty, setoff, addition to tax, and/or interest assessment shall be limited to that resulting from any adjustments to the section 475 mark-to-market adjustments for the taxpayer's [REDACTED], [REDACTED], [REDACTED] and [REDACTED] tax years, including any consequential changes to other items based on such adjustment(s).

As used herein, the term "adjustment" means any change or changes to said item(s) whether reported or not reported on the return. The change can be in amount, taxable status, allocation, character, etc.

As used herein, the term "consequential changes" means any direct or indirect effect.

Since the requirements of I.R.C. § 6501(c)(4)(B) pertaining to giving the taxpayer notification of certain rights must be satisfied, please ensure the statute extension is requested by the most recent revision of the appropriate Form Letter 907 or 967.

We have coordinated this advice with the National Office under the NSAR pre-review procedures. Please call Sandy Hwang at (949) 360-3432 or Joyce Marr at (949) 360-2688, if you have any questions.

Attachments: As stated